IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE A.K.BASHEER

WEDNESDAY, THE 17TH JANUARY 2007 / 27TH PAUSHA 1928

FAO.No. 10 of 2007()

AGAINST THE ORDER DATED 13/10/2005 IN IA.1142/05 IN OS.455/1991 of PRINCIPAL SUB COURT,KOLLAM

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: APPELLANT/PLAINTIFF:

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1. T. MAHESWARI BABU,
RESIDING AT LAKSHAM VEEDU COLONY,THUMBAVILAKOM,
MENAMKULAM VILLAGE, KAZHAKKOOTTAM,

2. M.D. BINU,
RESIDING AT LAKSHAM VEEDU COLONY,THUMBAVILAKOM,
MEENAMKULAM VILLAGE, KAZHAKKOOTTAM,

BY ADV. SRI .RAJA VIJAYARAGHAVAN

RESPONDENTS: DEFENDANT:

K. LALITHA CHELLAPPAN,
VELIYATHU PUTHEN VEEDU, KURISUMOOTTU LANE,
CHAVARA, SANKARAMANGALAM VILLAGE, KOLLAM.

BY

THIS FIRST APPEAL FROM ORDERS HAVING COME UP FOR ADMISSION ON 17/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

KURIAN JOSEPH & A.K. BASHEER, JJ.

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F.A.O.NO.10 OF 2007

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DATED THIS THE 17TH DAY OF JANUARY, 2007.

JUDGMENT

Kurian Joseph, J.

This appeal is filed against the order dated 13.10.2005 in I.A.No.1142/2005 in O.S.No.455/1991 on the file of the Principal Sub Judge, Kollam. Appellants are the plaintiffs in the suit. We cannot have a better narration of the facts than what is referred to in the impugned order. To the extent relevant the same is extracted below.

> "The suit is one for realisation of money. It has come for trial on 2.4.2003. On that day because there was no representation my predecessor in office has dismissed the suit for default. The present petitioners filed I.A.No.1600/1993 to set aside the dismissal and to restore the suit to file. The aforesaid petition was dismissed for default on 1.10.1994. To set aside the aforesaid order and to restore the restoration petition (I.A.No.1600/1993) the present petitioners have filed I.A.No.1956/2001. They have filed another application as I.A.no.1957/2001 for condoning the delay of 7 years and 10 months. Both these petitions were again dismissed for default on 2.7.2003. To restore the aforesaid I.A.No.1956/2001 and I.A.1957/2001 the petitioners have filed I.A.No.2447/2004 together with

I.A.No.2448/2004 seeking to condone delay of 361 days. These applications also happened to be dismissed on 16.3.2005 for non compliance of the direction to produce paper publication. The said orders are sought to be set aside in the present petition."

In the above facts and circumstances, we do not find that the appellants are entitled to any indulgence from the court. There should be a limit to the harassment to the respondent. Learned counsel made a desperate attempt and submitted that the appellants could be put on terms. In the facts and circumstances of the case referred to above, we do not think that the appellants are entitled to such an indulgence, since the consequence will be another turn of harassment to the respondent. The order passed is perfectly legal and reasonable.

The appeal fails. It is accordingly dismissed.

(Kurian Joseph, Judge.)

(A.K. Basheer, Judge.)

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